IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

RCRev..No. 265 of 2007()

RCA.213/2005 of ADDL.DISTRICT COURT, KOZHIKODE
RCP.10/1995 of MUNSIFF COURT, KOIILANDY
.....

REVISION PETITIONERS/APPELLANTS/RESPONDENTS
---

1. P.AYISHABI, AGED 35 YEARS,
   D/O.PATHARVALAPPIL NAFEESA UMMA.

2. P.SUBAIDA, AGED 33 YEARS,
   D/O.PATHARAVALAPPIL NAFEESA UMMA.

3. P.KAREEM, 31 YEARS,
   S/O.PATHARVALAPPIL NAFEESA UMMA.

4. P.MAJEED, 29 YEARS,
   S/O.PATHARVALAPPIL NAFEESA UMMA.

5. P.NASITHA, 26 YEARS,
   D/O.PATHARVALAPPIL NAFEESA UMMA.

6. P.THAHA, 24 YEARS,
   S/O.PATHARVALAPPIL NAFEESA UMMA.

7. P.HASHIM, 22 YEARS,
   S/O.PATHARVALAPPIL NAFEESA UMMA.
   (ALL ARE RESIDING AT PATHARVALAPPIL,
   PANTHALAYANI AMSOM DESOM, KOYILANDY).

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS: RESPONDENTS/PETITIONERS
---

1. V.V.RUGMINI (DIED).

2. P.LATHEEF, AGED 27 YEARS,
PATHARVALAPPIL NAFEESA UMMA, PATHARVALAPPIL,
PANTHALAYANI AMSOM DESOM, KOYILANDY TALUK.

3. V.V.REETHA, D/O.LATE RUGMINI.

4. V.V.RATHEESH, S/O.LATE RUGMINI.
(SUPPL.R3 AND R4 ARE RESIDING IN 'REETHA NIVAS'
PALLIKULAM AMSOM, CHIRAKKAL DESOM, KANNUR DIST.).

BY/

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. BALAKRISHNAN NAIR & HARUN-UL-RASHID,JJ

==========

R.C.R. NO. 265 OF 2007

==========

Dated this the 14th day of August, 2007.

ORDER

Balakrishnan Nair,J

The landlords sought eviction under Section 11(2)(b), 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act. The Rent Controller dismissed the application. The tenant filed appeal R.C.A No. 32/1998. The appellate authority found that the bona fide need put forward is genuine, but further held that the tenants are entitled to get protection of the 2nd proviso to Section 11(3) of the Act. The landlord filed CRP No. 53/2001. This Court by judgment dated 09.12.2004 set aside the findings of the appellate authority concerning the 2nd proviso to Section 11(3) of the Act and the matter was remitted to the Rent Controller for a finding on the 2nd proviso to Section 11(3) of the Act. The findings of the appellate authority regarding the bona fide need under Section 11(3) was sustained by this Court. The parties were ordered to be given an opportunity to adduce evidence. After the remand, the brother of the original landlord

was examined as PW3 and Exts. A5 to 10 were marked. An Advocate Commissioner was appointed and he filed C1 and C2 reports. The matter was heard. The Rent Controller found that the tenants failed to prove that they were mainly depending on the income derived from the business in the petition schedule room. They also failed to show that no suitable building is available in the locality. Therefore, the protection of second proviso to Section 11(3) was rejected by the Rent Controller. The said decision was affirmed by the appellate authority also. The tenants except the 2nd respondent have come up in revision contending that the above findings of the appellate authority is illegal, improper and irregular.

2. The learned counsel for the petitioner contends that the revision petitioners are mainly depending on the income derived from the business in the petition schedule premises. He also points out relying on Exts.C1 and C2 that no suitable room was available in the locality. Therefore, the learned counsel for the petitioner prayed for vacating the findings of the appellate authority that the revision petitioners are not entitled to get protection under second proviso to Section 11(3) of the Act.

3. The 2nd proviso has got two limbs. The first limb is that the tenant is mainly depending on the income derived from the tenanted premises. Secondly for shifting of the business no suitable room is available in the locality. The appellate authority found, based on the additional documents produced from the landlord's side, that the tenant owned three goods auto rickshaws and a mini lorry. Therefore, it was found that they are not depending mainly on the income derived from the tenanted premises. The learned counsel for the petitioner could contend that the tenants have several mouths to feed and the income from the auto rickshaws and mini lorry is not sufficient. But the tenant did not adduce any evidence in this regard. Therefore, we cannot say that the assumption made by the appellate authority that they are not mainly depending on the income derived from the tenanted premises is perverse. We feel that it is a plausible view on the facts. Regarding the second limb of 2nd proviso, the learned counsel for the petitioner pointed out that the rooms found available are in far and remote places and they are not suitable for running the business. As per the first report C1, the Commissioner has noticed that several rooms were found

remaining closed without any business, but it cannot be ascertained whether they are actually available for rent. In the additional report Ext. C2, there is a specific mention that in the municipal market building on the northern side, room Nos. 19/661 A to G, were found to be remaining closed and there was a board exhibited stating that rooms are available on rent and a phone number was also found exhibited. Another finding in the commission report is that on the northern side of Koyilandy railway station road a new shopping complex is constructed where 16 vacant rooms were available. The learned counsel for the petitioner pointed out that they are not suitable for the business of the tenants. But as noticed by the appellate authority, the tenants did not tender any evidence, but only tried to find out the loopholes or lacunae in the evidence tendered from the side of the landlord. The decisions of this Court would go to show that the rooms available need not be equally convenient. It is also held by this Court that the alternate accommodation available can be in the same village or in the same town. Going by the above principles, we feel that the findings of the appellate authority that the rooms are available

for shifting the business of the tenants cannot be said to be a perverse finding or a finding which no man in his sense will arrive at warranting interference by this Court under Section 20 of the Rent Control Act. It was for the tenants to show, by adducing evidence, that the rooms were not suitable. In the result, the Rent Control Revision fails and it is dismissed.

Learned counsel for the petitioner prayed for some time to vacate the premises. Six months time is granted from today provided the petitioners file an affidavit before the Rent Controller undertaking to vacate the premises within six months and also to pay rent regularly till the tenanted premises are given vacant possession to the landlords. The affidavit shall be filed within one month from today.

K. BALAKRISHNAN NAIR, JUDGE.

HARUN-UL-RASHID,JUDGE.

rv